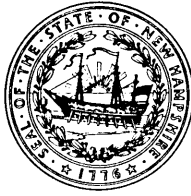


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February 2, 1988

Alden H. Howard, Commissioner
Department of Environmental Services
6 Hazen Drive
Concord, NH 03301

RE: State Revolving Loan Fund Legislation

Dear Commissioner Howard:

You requested this office to examine the 1987 amendments to RSA 149-B which established a water pollution control revolving loan fund. See RSA 149-B:12. Specifically, you asked whether additional state legislation is necessary before this federally funded state revolving loan program will be eligible to receive available capitalization grants from the United States Environmental Protection Agency ("EPA"), or whether the Department of Environmental Services ("DES") has adequate authority to adopt rules to ensure compliance with federal requirements for the receipt of such funds.

It is our conclusion that no further legislative amendments to RSA 149-B:12 are necessary, and that this statutory provision delegates rulemaking authority to DES in a manner sufficient to comply with Section 603 of the Clean Water Act. See 33 U.S.C. §1251 et seq. As further detail regarding the form and administration of the fund is required in order to comply with the federal program, I have summarized those elements which are prerequisites to receipt of grant awards and therefore must be incorporated by DES into rules.



The present terms of RSA 149-B:12 grant explicit authority for the State to participate in the federal funding program, and the commissioner of DES is designated to administer the fund pursuant to rules promulgated pursuant to RSA 541-A. See RSA 149-B:12. The legislation also establishes a committee to "assist and advise the commissioner of environmental services in developing guidelines and rules for determining eligibility and the administration of the loan fund." *Id.* The intent of the legislature that DES participate in the federally funded program is without question, and, in our opinion, the grant of rulemaking authority delegated to DES is broad enough to achieve implementation of the pertinent federal requirements. Therefore, there is no need to incorporate specific federal prerequisites into statutory amendments when the same result may be accomplished through agency rulemaking.

EPA draft guidance memoranda currently interprets Section 603 of the Clean Water Act as requiring the following before a capitalization grant award may be received to fund a state revolving loan fund program (hereafter "SRF" or "program"):

1. The SRF must be a separate account or series of accounts;
2. The program must be dedicated solely to providing loans and other forms of financial assistance, but in no instances grants;¹
3. The SRF must be administered by a state agency which currently is empowered to enter into capitalization agreements with EPA;
4. The SRF must be administered by a state agency presently empowered to accept grant awards made under Title VI;²
5. The Fund must be administered in accordance with requirements of Title VI as well as the overall objectives of the Clean Water Act.

¹ Such assistance may be made available for construction of POTW's that appear on the State's construction grants priority list. In addition, the money may be used to implement a nonpoint source pollution control management program, or to develop and implement an estuary conservation and management program. See 33 U.S.C. 1328 and 1329 (1987).

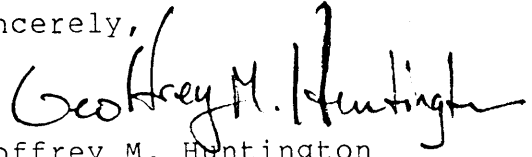
² Title VI is the first of a series of federal civil rights statutes designed to ensure that programs receiving federal grants are operated in a nondiscriminatory manner. To this end, care should be taken that rules adopted by DES relative to a SRF are consistent with rules enacted for other state programs in New Hampshire receiving federal assistance which have been endorsed by U.S. EPA.

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As DES prepares to make the initial application to EPA for the capitalization grant, EPA must be furnished with both documentation establishing the program and the regulations under which it will be administered, as well as documentation of the State's participation in the Title VI program.

I trust that this has been responsive to your inquiry. Please feel free to contact me should the committee established to assist in developing the regulations required to implement the legislation need any assistance.

Sincerely,

A handwritten signature in black ink, reading "Geoffrey M. Huntington". The signature is written in a cursive style with a large, stylized initial "G".

Geoffrey M. Huntington
Attorney
Environmental Protection Bureau

O-87-083
GMH/rg

cc: Thomas Seigle, WSPCD